Lincoln E. Brown
Director-Federal Regulatory

SBC

EX PARTE OR LATE FILED

Ex Parte

July 31, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Mail Stop Code 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: CC Docket No. 98-91

Yesterday, July 30, 1998, Daryll Howard, Kathy Rehmer, David Ho, and the undersigned
representing SBC met with Bob Pepper, Dale Hatfield, and Stagg Newman representing
the Office of Plans and Policy and Bill Kehoe representing the Policy division of the
Common Carrier Bureau. The purpose of the meeting was to discuss issues in the above
referenced docket. The discussion focused on 272 affiliate issues, state preemption
issues, and spectrum unbundling. The attached documents summarize the significant
points of the discussion.

Please include this letter and the attachments in the record of these proceedings in
accordance with Section 1.1206(a)(1) of the Commission's Rules.

Acknowledgment and date of receipt of this transmittal are requested. A duplicate
transmittal letter is attached concerning this matter.

Respectfully submitted,

CC: Bob Pepper
        Stagg Newman
        Dale Hatfield
        Bill Kehoe

FCC Ex Parte
272 Issues/ADSL

This ex parte was prepared to respond to a scenario where the FCC would create a "safe harbor" rule that would permit an incumbent LEC to have an affiliated data carrier that would not be treated as an incumbent LEC under section 251, but instead both the affiliate and its services would be treated as non-dominant. The scenario (and SBC's analysis) is based on the assumption that the affiliate would be subject to section 272 structural separation requirements (or those that are "section 272 like"). Regardless of whether the FCC establishes such a safe harbor, SBC continues to believe that the integrated approach it suggested where regulatory relief is provided for advanced telecommunications capability provided by an incumbent LEC is much preferred, would still be needed, and should be granted.

Nevertheless, in order to identify for the FCC the issues that will be considered in making a business decision on whether a safe harbor is an attractive alternative, SBC has analyzed the scenario with a focus on identifying the regulatory, technical, operational, financial, economic, legal, and other issues that are raised by the FCC's scenario. Creating a safe harbor that does not sufficiently address the identified issues in a timely fashion such that the safe harbor would not be used simply does not further the Congressional goal set by section 706, nor would it fulfill the FCC's mandatory duty to encourage actively the achievement of that goal.

These issue are not necessarily presented in order of importance.

Joint Marketing

- ILEC must have ability to market all services, interLATA when authorized, or intraLATA immediately, offered by its 272 affiliate
- Nondiscrimination requirements should not attach to such provision of marketing and sales
- The Commission needs in any event to eliminate the CPE bundling prohibitions applicable to all common carrier, including CLECs and ILECs, for advanced telecommunications capability

CPNI

- FCC should affirm that ADSL and other advanced services fall within the local service basket of services with respect to CPNI

Relief From Absoluteness of Nondiscrimination Obligations

- Address procurement process when ILEC obtains capacity for 272 affiliate's network; nondiscriminatory procurement procedures should not be required.
- Product development process should be under the exemption considered joint marketing and thus, relieved of nondiscrimination obligations

Sunsets & Audit Requirements

- Sunset of structural separation requirements should have a firm date and not be dependent on FCC requirements
- FCC should not adopt the stringent audit plan proposed for 272 compliance but should rely on officer compliance affidavits.

Grandfathering

- Collocation of deployed advanced telecommunications capability equipment; prospectively collocation would be provided on a nondiscriminatory basis
- Relief from OI&M prohibition for the grandfathered equipment
- Strategic behavior

Treatment of Affiliate as a Carrier

- The FCC should affirmatively state that the affiliate is able to deal with ILEC like any other carrier is able to under the 1934 Act and the ILEC's tariffs irrespective of structural separation restrictions (for example, ILEC should be able to provide affiliated carrier virtual collocation under the 1996 Act or tariffs even though ILEC will then be providing OI&M on the affiliate's collocated equipment)

Affiliate Must Not Be An Incumbent LEC under Section 251(h)

- The FCC needs to affirmatively indicate that if the safe harbor applies, the affiliate cannot be deemed, or be treated as, an "incumbent LEC"
- Such a conclusion is supported by 251(h) in that the data affiliate would not be "a successor or assign" under that provision or, in the alternative, because the section 10 standard is met for forbearing from that provision

State-Imposed Obligations that Raise Preemption Issues

- State regulations that have the effect of prohibiting or restricting the provision of marketing & sales by ILEC solely for the data affiliate
- Asset transfer laws or regulations, e.g., State laws that require an approval process before any transfer of assets can occur
- Prohibitions or limitations on the data affiliate of the ILEC becoming a full service CLEC, e.g., local voice carrier operating in the same area as the ILEC
- Inconsistent regulation of integrated carrier (Para. 317 needs to be reversed)
- State laws or regulations that would treat or have the effect of treating the data affiliate as an "incumbent LEC" or as part of the existing ILEC, e.g., State unbundling requirements, wholesale discounts, ILEC regulation of data affiliate's offerings
- Any preemption should be affirmative relief that does not require time-consuming individual requests or proceedings

Note: The need for preemption arising from the FCC's proposal to adopt a separate affiliate structure (e.g., CLEC certification, asset transfer) would not be required if ILECs were able to offer advanced telecommunications capability on an integrated basis subject to nonstructural separation requirements.
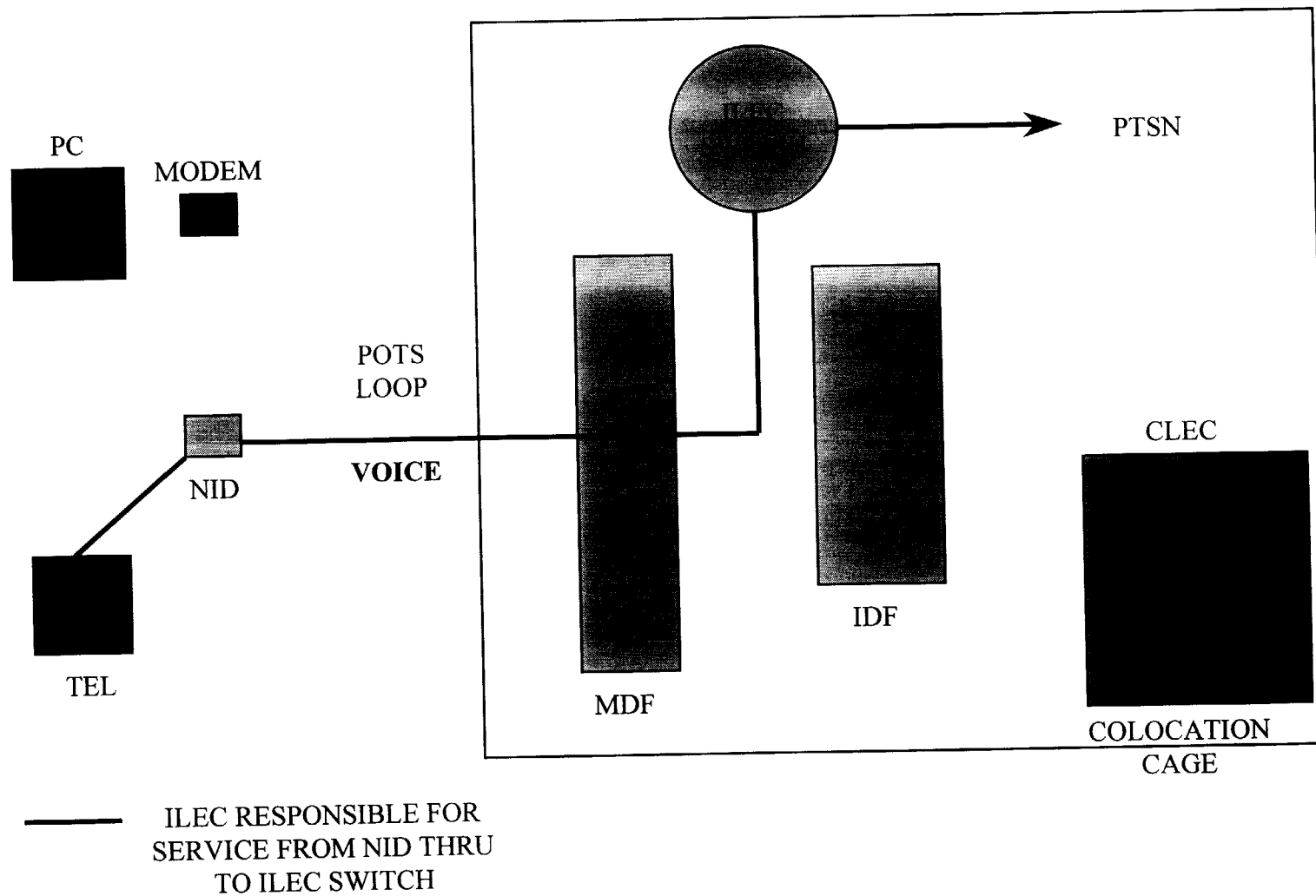
A Self-Effectuating Safe Harbor Process Needed

- Like other federal safe harbor rules, the data affiliate rules should be self-effectuating, i.e., no affirmative approval or specific authorization needed from the FCC
- The process should permit ILECs, at their discretion, to obtain specific rulings on an expedited basis, e.g., use the short-term network notification procedure as a template, with an "approved unless action is taken" timeline
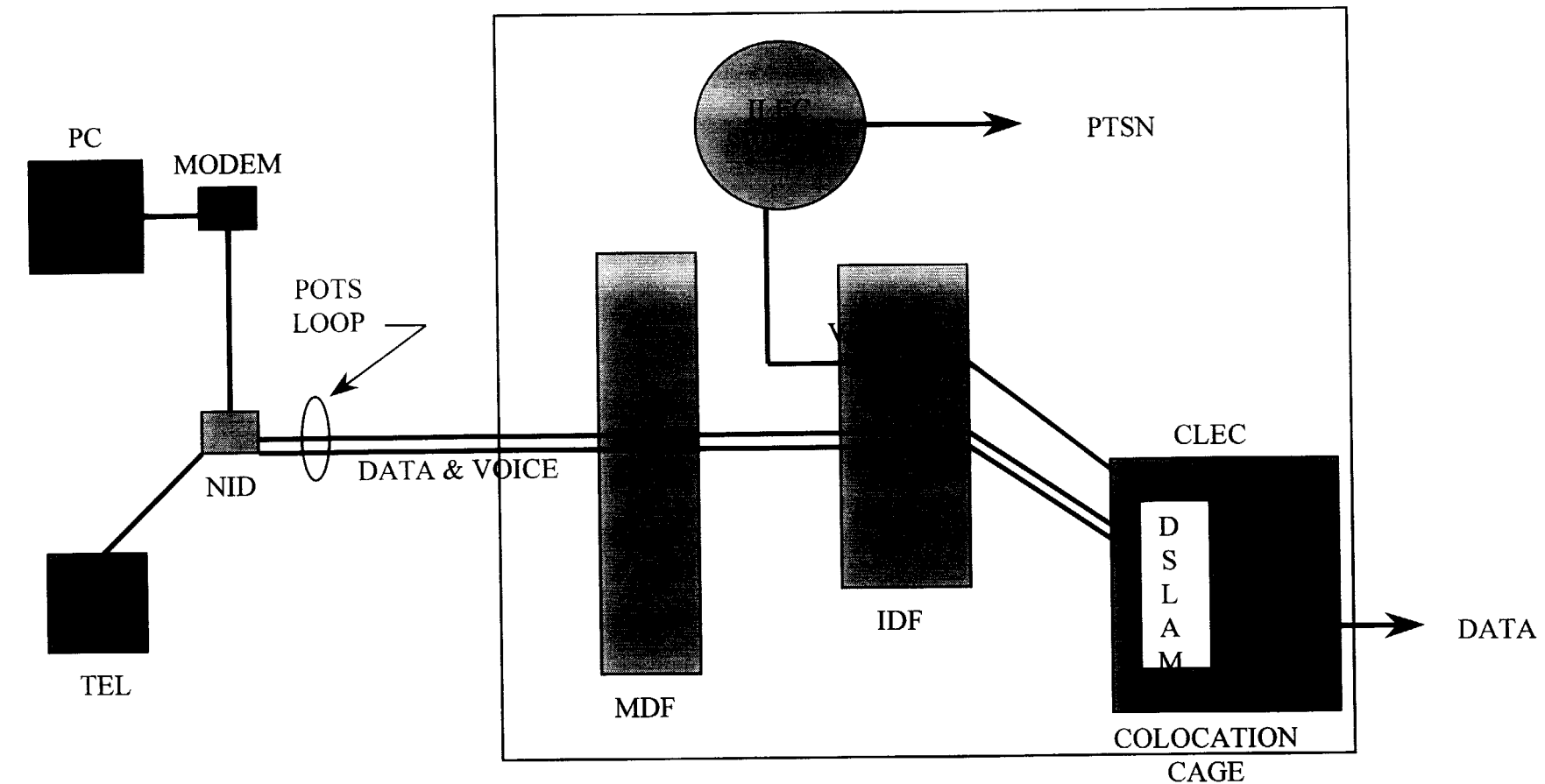
SPECTRUM UNBUNDLING

- Definition: Spectrum Unbundling is when one entity (e.g., ILEC) provides service (e.g., Local Exchange - POTS) over its facilities (e.g., copper pair) utilizing a specific frequency band and makes a different frequency band available to a second entity (e.g., CLEC) over these same facilities so the second entity can provide a simultaneous service (e.g., ADSL).

- Beyond the issue of technical feasibility, spectrum unbundling is impractical in today's network
  - administrative & record difficulty
  - trouble reporting & intrusive testing problems
  - mixes retail and interconnection

- ILEC retail and resold POTS should not be required to be spectrum unbundled

- CLECs can provide ADSL and their own POTS with UNEs
  - can use UNE loop to carry voice and data to their collocated equipment
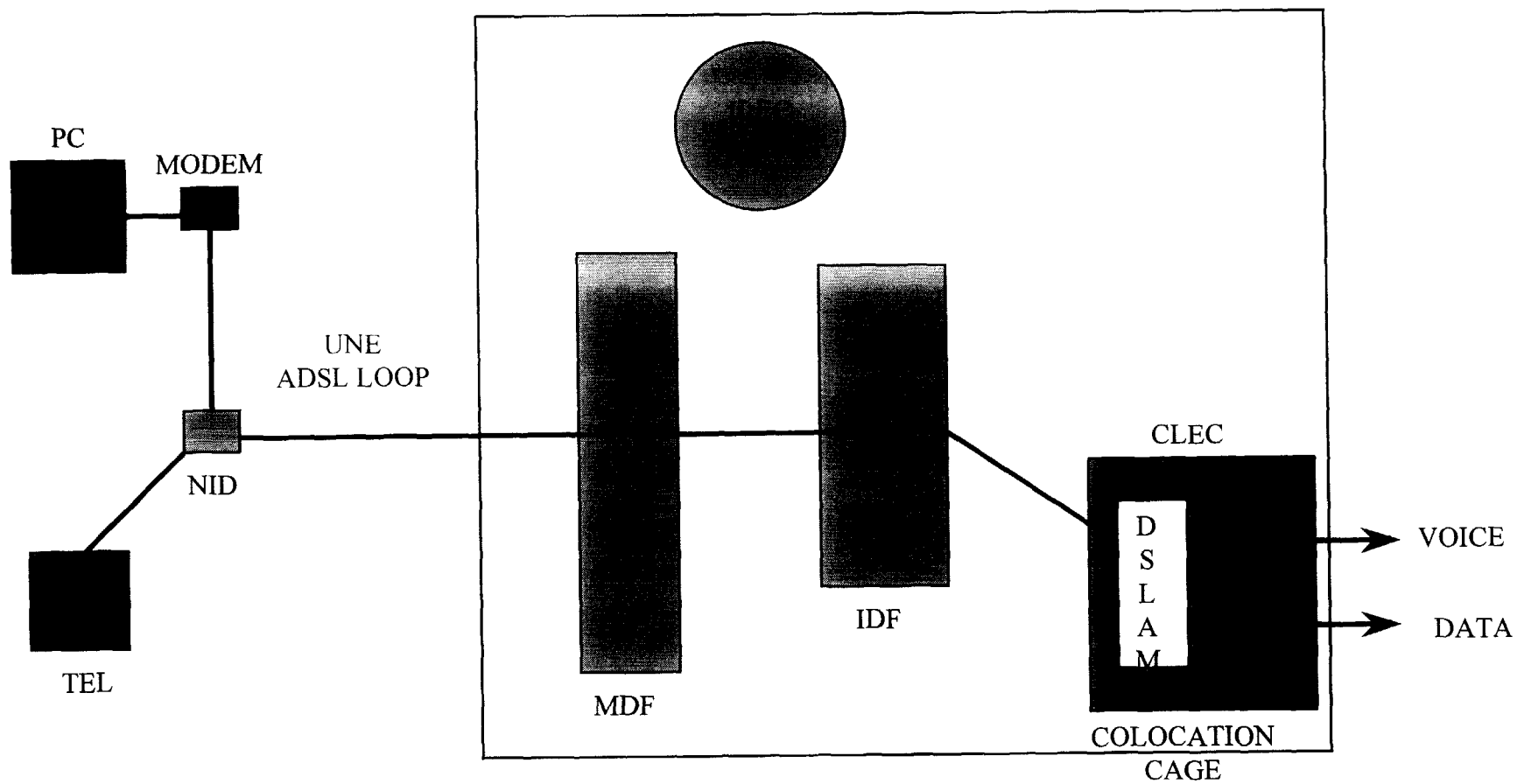 - can use UNE loop and UNE switch to provide POTS and ADSL

ILEC RETAIL & RESOLD LOCAL EXCHANGE - POTS

PC

MODEM

PTSN

POTS
LOOP

VOICE

NID
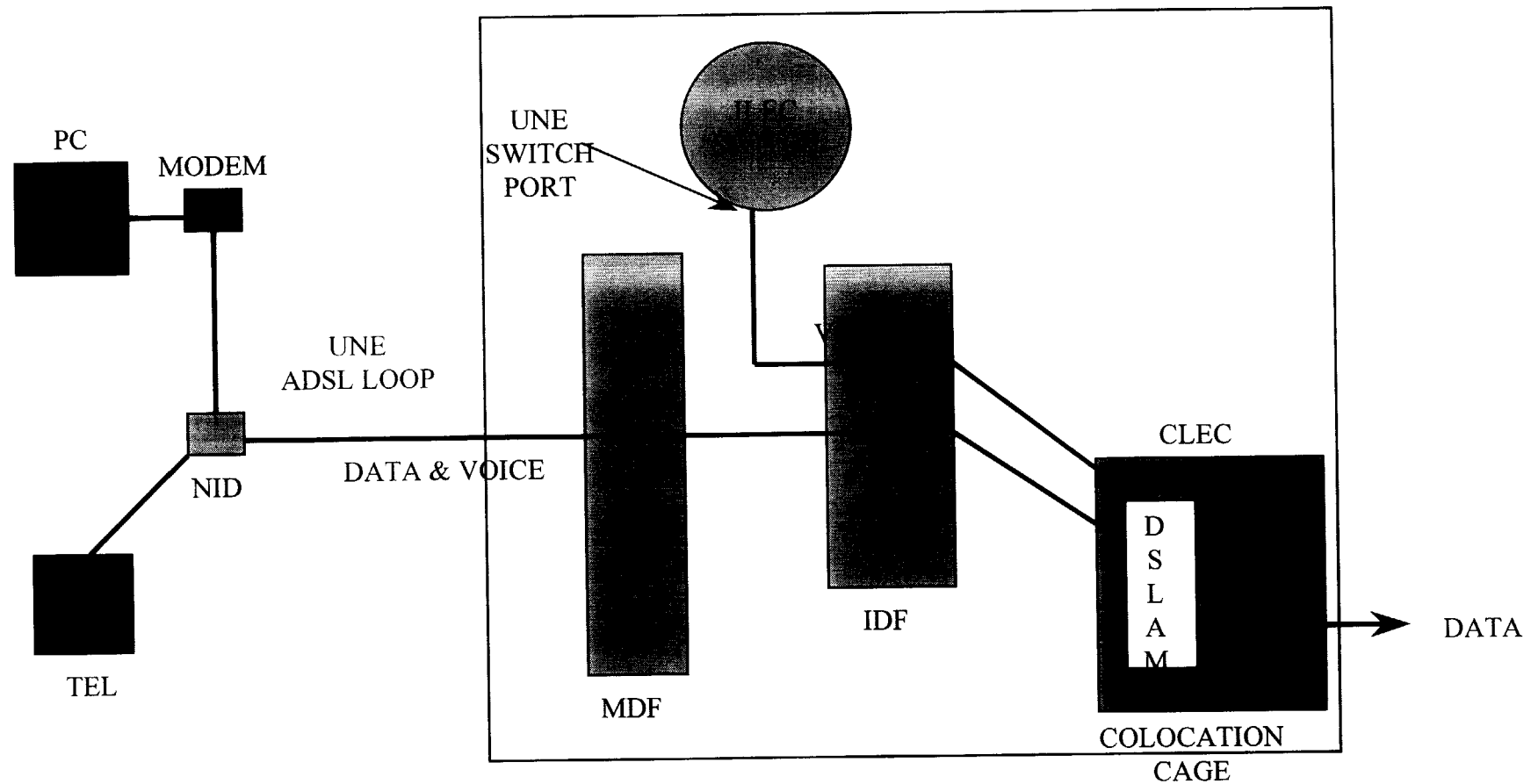
CLEC

TEL

IDF

MDF

COLOCATION
CAGE

—— ILEC RESPONSIBLE FOR
SERVICE FROM NID THRU
TO ILEC SWITCH

SPECTRUM UNBUNDLING
CLEC ADSL OVER ILEC POTS

PC

MODEM

ILEC
SWITCH

PTSN

POTS
LOOP

DATA & VOICE

NID

TEL

MDF

IDF

CLEC

D
S
L
A
M

COLOCATION
CAGE

DATA

———— ILEC CANNOT SUPPORT POTS SVC
SINCE IT GOES THRU CLEC DSLAM
(NO ACCESS TO DSLAM)

CLEC ADSL & POTS OVER UNE LOOP

ILEC RESPONSIBLE FOR UNE LOOP

CLEC ADSL & POTS OVER UNE SWITCH AND UNE LOOP

PC

MODEM

UNE SWITCH PORT

UNE ADSL LOOP

NID

DATA & VOICE

TEL

MDF

IDF

CLEC

D
S
L
A
M

DATA

COLOCATION CAGE

ILEC RESPONSIBLE FOR ONLY UNES,
NOT FOR END-TO-END POTS